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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1535)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody. Welcome to meeting number 118 of the Standing Committee on Industry, Science and Technology as we continue our five-year legislated review of the Copyright Act.

With us today we have, from the Canadian Publishers' Council, David Swail, president; from News Media Canada, John Hinds, president and chief executive officer; and from Wikimedia Canada, Jean-Philippe Béland, vice-president.

We'll have up to seven minutes for each presentation.

Before we start, I'll recognize Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Mr. Chairman, I will be very brief. I have a point of order just to submit a notice of motion. I will read the motion into the committee record:

> That the Standing Committee of Industry hold hearings to study the proposed purchase by this government of the Trans Mountain Expansion Project pipeline and infrastructure, including: a) the terms of the purchase including the costs to taxpayers and long-term impacts of purchasing and completing this project, b) the direct and indirect impacts on Canadian businesses directly in competition with pipeline products and the use of those products in respective markets, and, c) the plan for the sale of this project once completed.

Thank you, Mr. Chair.

The Chair: Thank you. We have received your notice of motion.

We're going to move to David Swail, president.

You have up to seven minutes, sir.

Mr. David Swail (President, Canadian Publishers' Council): Excellent. Thank you for the opportunity to appear before the committee. We certainly appreciate the opportunity to add our perspective to what is a very critical area of concern for us and for all of our stakeholders.

As mentioned, my name is David Swail, and I'm president of the Canadian Publishers' Council. Our organization represents 16 of Canada's largest publishers operating across all segments of our industry, including trade publishing, higher education, K-12, and professional markets. Our members are a mix of Canadian-owned firms and the Canadian subsidiaries of global publishers such as Penguin Random House, HarperCollins, Pearson, Scholastic, and Nelson, among many others.

Our members' aggregate revenue in 2017 was $853 million, $384 million of which was with our customers in K-12 and higher education. Collectively, we directly employ more than 3,000 highly skilled, knowledge-based workers and many thousands more in freelance and contract capacities, such as writers, editors, subject-matter experts, designers, illustrators, researchers, printers, and the list goes on, as you would imagine.

In 2017, we spent $40 million in advances and royalties with Canadian authors, and our members sell over 90% of the books that are purchased by Canadians each and every year. All of our members are for-profit, taxpaying companies in Canada, and the majority of our members receive no government grants.

I would like to focus my remarks on three main areas that have been affected by copyright modernization, and in particular by the fair dealing exception for education. Those three areas are jobs, investment, and innovation.

Before that, I would first like to make clear to the committee that the Canadian Publishers' Council members count the education sector among its most important customers. During consultations on CMA pre-2012, we were clearly in support of the concept of fair dealing, including fair dealing for education. Our only ask at that time was for language in the act that would clarify the intent of the education exception and, in particular, definitions that would safeguard the commercial market for the resources that our members develop on behalf of education sector customers. Our understanding then was that this was a shared goal with our education customers.

Much of what has transpired since 2012 has confirmed our deepest concerns with the vagueness of definitions in the act. Therefore, our ask of this committee and this review process is that some clarity and balance be brought back to our marketplace.

Let me now return to the three themes of jobs, investment, and innovation.

As mentioned, we employ more than 3,000 Canadians directly but many times that number more in the important ecosystem that develops educational content for Canadian students and educators. These are predominantly highly skilled jobs that rely on an expert understanding of key subject areas, such as math and science, and the ways in which our education sector teaches those subjects to Canadian students from province to province.

Canadian publishing professionals are recognized widely for their expertise by the global firms that employ them, and they are regularly called in to help with international projects where our skills at understanding instructional design and learning outcomes are highly respected. We pride ourselves in developing content that is matched to provincial curricula, has the highest level of quality and relevance, and importantly, is a strong reflection of the key elements that constitute Canadian identity and culture. This cultural relevance is a core requirement of our customer base, and it is what differentiates our products from foreign-sourced materials that were previously predominant in Canadian classrooms.

The lost income that has resulted from collective licences being abandoned has had a significant impact on Canadian publishers' margins. You heard a figure of $30 million, which is roughly 16% of industry profit, according to some measures. That makes Canadian publishing firms inherently less profitable and therefore less able to support employment levels. Over the past five years, our members have reduced their workforce by 5% each and every year, a number that equates to close to 200 jobs, year in and year out, for many years running. At the same time, we have increased our technology-based jobs and introduced roles like developers, programmers, webmasters, etc., and related skill sets to our workforce. We've retrained our customer support people to handle technology support. We send experts to Canadian schools and campuses to help educators learn how to use digital resources in their classrooms effectively. However, we are still down 5% per year in employment even after those add-backs.

● (1540)

Turning now to investment, a critical strategy for Canadian publishers continues to be the development of digital platforms and products to serve the education sector. We do this in response to demand for these kinds of innovations from educators. Canadian publishers have been world leaders in the development and adoption of these key technologies, building Canadian solutions and adapting global platforms for Canadian use.

This effort has led to significant redirect of publishing investment away from print and towards technology that is often adaptive to student needs, and therefore, more efficient, more current, and often less expensive for customers. That investment is inherently at risk when the return on investment is reduced. The result is that global publishers increasingly see Canada as a less viable and more risky market than it was pre-2012, and investment levels in our sector continue to be at risk and to drop.

Three of our members, Oxford University Press, Emond Publishing, and McGraw-Hill Education, have exited the K-12 sector since 2012, which has led to a reduction in resources and diversity for K-12 classrooms in particular. Employment has decreased, but as you would expect, other areas of publishing investment have also been dropping.

Last, let me touch on innovation, which of course is closely tied to investment. I have mentioned our members' strategic shift towards digital resources. This has had a major impact not just on our employment and the nature of that employment, as mentioned, but more importantly on students and teachers and student outcomes. Today, all of our members have digital solutions that adapt to student needs, presenting only the most relevant and timely material to optimize their study time and learning outcomes. We enable teachers across the entire spectrum of K-20 to assign, grade, and assess student outcomes in a far more efficient manner than ever before using these technologies. This is particularly important for distance learning, as you would imagine, which encompasses many first nations students.

This significant progress, in which Canada has been a world leader, is driving our students' abilities to compete in a global economy, but it is at serious risk when investment levels drop. The opportunity to both originate and adapt global solutions for our classrooms is lost when global firms find it more efficient to simply offer unadapted global content with minimal or no Canadian input.

As we make this critical transition in our business, it is clear that some degree of reliance on print will continue to have a role in classrooms: hence, the 600 million pages that are copied without compensation every year in Canadian schools, colleges, and universities. We ask that the legislative language we have tabled be used to restore this marketplace for content reproduction as a properly compensated one. This will enable critical funds to continue to flow back into the creation of Canadian educational resources with the attendant benefits to students, teachers, creators, and knowledge workers, who have long been a part of our country's high achievement in education.

Thank you.

The Chair: Thank you very much.

We're going to move to News Media Canada and John Hinds.

[*Translation*]

Mr. John Hinds (President and Chief Executive Officer, News Media Canada): Good afternoon. My name is John Hinds, and I am the president of News Media Canada.

● (1545)

[*English*]

We represent over 700 daily community and weekly newspapers from across the country, from coast to coast to coast, in both English and French. We're very pleased that you're holding these hearings because it's a critical time for the newspaper industry. Our currency is our content, so a good copyright regime is crucial to our business.

As you are aware, we are an industry that is facing a huge challenge as our business model has been disrupted. We're in the process of moving from a traditional industrial business where most revenue was from print advertising to a digital model where revenues come from readers and advertisers.

The one challenge the industry does not have, however, is a reader challenge. Canadians are consuming more and more newspaper content, with about 88% of people reading every week. They are obviously changing how they consume our content, although print is still read by about six in 10 Canadians every week.

Newspapers in Canada remain the biggest source of news in most communities, employing almost two-thirds of working journalists in the country. As you're aware, good content is expensive, particularly investigative and public interest journalism, which I think we would all agree is important to the functioning of a civil society. The newspaper industry continues to make big investments to produce quality fact-based stories in every community in this country.

However, we have a big challenge. As an industry we need to be able to get a return on the substantial investments that we make. Unfortunately, under the current copyright regime, this is becoming harder and harder to do. As we adapt our businesses to the realities of the digital market, we need to have a better way to protect that investment.

Historically, newspapers have complained about "rip and read" by our competitors at local TV and radio stations. At the time we understood that this was the price to pay for being a leader in news. However, the situation in the digital world is a totally different game. Free riders such as Google News and other aggregator sites are making no investment in content yet are making millions from our content. It's a sad fact of the Internet that many companies, large and small, old and new, Canadian and foreign, systematically scrape and republish newspaper content for commercial purposes, without payment or permission, and the current copyright regime allows it.

I would venture to say that each of you makes use of a news aggregator service in your parliamentary office. What's happening today is that our content is being scraped, copied, and distributed by commercial organizations, which then profit from displaying newspaper content without permission. It's clear that readers and advertisers value the editorial content from newspapers that appear on third party websites, platforms, and search engines, and this brings enormous value to these parties. In addition, publishers are increasingly seeing that these third parties are becoming substitutes for the original publication.

A free and independent press can only exist if there's adequate revenue to pay journalists, editors, photographers, and freelancers, among others. Today this arrangement is being eroded by a loss of revenue. The majority of the advertising revenue goes to search and social media. In addition, we see the unauthorized and unremunerated large-scale use of publishers' content, and the lack of legal recourse to deal with large-scale infringements.

Press freedom is not just a function of law; it depends on a market that can generate sufficient returns to the huge financial investment required to cover the large legal and commercial risks of the news business. A strong and vibrant market with meaningful rewards for success is an essential component of a strong, independent, and free press. In order for publishers to continue to produce news, analysis, investigative reporting, features, opinions, and to cover institutions such as Parliament, there has to be fair value exchange between those who produce content and those who distribute it.

What we are seeking is a change to the balance of the law, with publishers having control over their content and being provided with legal protection and clarity. We hope that any new legislation would provide legal protection by introducing rights to protect the unauthorized reproduction and distribution of publications in the digital space.

This is something we see in film, music, and software, whose works are copyrighted. The law gives the creators of content in those industries the legal right to decide how and when their content is made available, and perhaps equally as important, to enter into fair and appropriately negotiated agreements with users. We would like to be clear, however, that this is for commercial purposes only. Any new right would have no impact on anybody's right to link or share articles. Publishers, of course, encourage their readers to link and share their articles through multiple share buttons on a website or application.

We've been continually told by members of the government that we need to embrace new business models. Canada's newspapers have made an important transition to digital over the past decade, with high degrees of innovation and large growth in audiences. We've embraced the digital age, and many newsrooms now contain as many technical staff as editorial. However, large-scale exploitation of the content by third parties without prior authorization/remuneration, makes it difficult for publishers to sustain quality independent journalism.

It's essential that Canada's copyright regime catches up with today's realities and allows publishers the right to control the commercial use of their content.

Thank you.

The Chair: Thank you very much.

Finally, from Wikimedia Canada, we have Jean-Philippe Béland.

[*Translation*]

Mr. Jean-Philippe Béland (Vice-President, Wikimedia Canada): Mr. Chair, first of all, I would like to clarify something: I represent Wikimedia Canada, but not the Wikimedia Foundation.

Members of the committee, let me introduce myself: My name is Jean-Philippe Béland, and I am the vice-president of Wikimedia Canada.

The mission of Wikimedia Canada is to give Canadians free and open access to knowledge, in addition to providing them with the tools and skills required to contribute to sharing their knowledge globally. We help Canadians to collect, develop and disseminate their knowledge and other educational, cultural and historic content in all languages of Canada, including aboriginal languages, under a free licence or in the public domain.

In this context, a free licence is a licence that the authors apply to their creations, which allows anyone to use, transmit and edit the content of creations without permissions or royalties, while the authors retain authorship of their works.

This work applies in large part to online projects, under the Wikimedia platform. Wikipedia is the most known of Wikimedia projects. It is a collaborative encyclopedia consulted by several million visitors every day and is available in over 300 languages. The Wikimedia projects are supported by the Wikimedia Foundation, based in the United States, and of which Wikimedia Canada is an official branch.

Wikimedia is a non-commercial and advertising-free platform. Unlike Google or Facebook, the Wikimedia Foundation does not keep personal data profiles of its users.

The importance of Wikipedia in the field of access to knowledge is well established. The encyclopedia is developed by thousands of volunteers from around the world, including many dedicated Canadians. The site is ranked sixth among the most visited sites in the world, and it is very often among the first results given by search engines. We can say with certainty that Wikipedia is one of the most popular sources of information and knowledge among citizens. In fact, it is a central node in the Web ecosystem, since Facebook and YouTube recently announced that Wikipedia content would be a central element of their plan to combat false news.

The type of licence used to distribute content on Wikipedia is a cornerstone of the project, enabling the widest possible dissemination of knowledge by allowing the content to be reused without royalties or permissions.

● (1550)

The Chair: I'm sorry to interrupt you, but could you slow down, please?

Thank you very much.

Mr. Jean-Philippe Béland: Yes. No problem.

In a letter from its ministers, the Government of Canada stated that an "effective copyright system should foster a market and an environment in which all users have access to content ... for the purposes of information, entertainment, education and cultural heritage". Wikimedia Canada is proud to see the Government of Canada's efforts for open government. For a government to be considered open, it must promote all means that make information accessible to its citizens. Wikimedia is one such means.

It would be wise to take advantage of the exceptional referencing of Wikimedia projects in search engines. Good quality and reliable information should always be among the first research results to which citizens have access.

Contributors to Wikimedia projects are very enthusiastic about accessing quality content from the Canadian government to improve articles in the free encyclopedia. To date, there is a major barrier to the use of this content. Indeed, it is protected by default by crown copyright, which prohibits its use in Wikipedia and other Wikimedia projects.

In order to address this problem of knowledge dissemination, it is our view that the Copyright Act, specifically section 12, which governs crown copyright, should be revised to make government and agency data free for use. Therefore, we propose that the Canadian government replace crown copyright with placement into the public domain of all its works or, at a minimum, grant a licence allowing their reuse without having to request permission, including for commercial purposes. This proposal is entirely consistent with the vision of Canada's open government. Ultimately, this would allow Canadian content to be reused and, as a result, more widely disseminated and accessible for the benefit of all citizens.

Let's take a simple example. In the United States, where the work of federal employees is automatically placed in the public domain, government produced photographs are used to illustrate Wikipedia articles and are subsequently reused by journalists for whom Wikipedia is often the first reference.

Currently, many encyclopaedic articles on topics of interest to Canadians are illustrated with photographs from the U.S. government, as they are in the public domain, or with poor quality photographs. If the Government of Canada adopted a policy similar to that of the United States, the government's official photographs would be placed in the public domain and could be used on Wikipedia to illustrate the articles concerned.

Let's take a slightly more complex example, which involves all of the Canadian government's data collected by its researchers across the country. Making this data accessible to all would allow the reuse of data sets for new research and collaborations, both in Canada and internationally. We can think of weather data, for example. If these data were made compatible with those in the Wikidata database, researchers and citizens around the world would have access to them. In addition, the Government of Canada and its citizens could benefit from the fact that the Wikimedia Foundation offers free cloud hosting to maintain this data. In addition, they could be integrated with other data for further research and better results.

Such provisions would not change the protection of classified documents and other confidential information that must remain secret or not be disclosed to the public, since this information is already protected by other laws and regulations and these would apply.

I would like to thank the committee for inviting Wikimedia Canada to participate in the Copyright Act review process. We remain available to participate in efforts to make government more open and accessible.

I would be pleased to answer all your questions.

Thank you very much.

● (1555)

The Chair: Thank you very much.

[*English*]

I just want to inform everybody that it looks like bells will ring at four o'clock. We're going to come back and ask questions, but I thought that if we got unanimous consent right now, we could do five minutes, five minutes, five minutes, and then we could go when the bells ring.

Is everyone good with that? All right, good.

We're going to start with Mr. Baylis.

You have five minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, Mr. Chair.

[*Translation*]

I will start with you, Mr. Béland.

How does Canada's crown copyright compare to that of the United States? My understanding of this is that the United States has an open approach to this.

Mr. Jean-Philippe Béland: Yes. In the United States, when the work produced by the employees of the federal government and its agencies, such as NASA, is published, this content is automatically in the public domain, because the federal government considers that the population has already paid through its taxes for the production of this content.

Mr. Frank Baylis: What about in other countries in Europe and Asia? Do you have access to that information? You don't have to respond right now, but I would like to know how we compare to other countries.

Mr. Jean-Philippe Béland: I don't currently have data on other countries, but I can do some research and send what I find to the committee.

Mr. Frank Baylis: It would be interesting to know how we compare to other countries. Could you prepare that and send it to the clerk?

Mr. Jean-Philippe Béland: Yes.

Mr. Frank Baylis: Thank you.

[*English*]

Mr. Hinds, if we look at things like Wikimedia, people who go to that site and add to it on a free licence know what they're doing. You even might have some of your journalists, for example, who choose to put something up on the Wikimedia free site, and you accept that.

What's concerning to you is these aggregators. There's one of them that is taking.... If I understand it, they just take whatever article you've published and reaggregate it. You mentioned Google News.

Mr. John Hinds: That's right.

Mr. Frank Baylis: They make the money off that, and then your journalists....

Mr. John Hinds: They aggregate the content and then basically sell ads around it using the content. With Wikipedia, again, it's not a commercial enterprise, but if you look at—

Mr. Frank Baylis: Under what jurisdiction are they doing that? What gives them—

Mr. John Hinds: Fair dealing.

Mr. Frank Baylis: It's done under the fair dealing of what?

Mr. John Hinds: For newsgathering.

Mr. Frank Baylis: Fair dealing for newsgathering. For example, if I want to read a certain newspaper, I have to pay. As I understand it, if I went to one of these aggregated sites I would get around paying for that same article. I would get it free.

Mr. John Hinds: I think one of the things we were disappointed with is that we thought when this legislation came in that the paywalls would protect us, but what we've found is that you can go behind the paywall, take the content, and then put it out in the public domain.

Mr. Frank Baylis: Theoretically, could Google pay for one licence, and then, once they have that licence, take every single article with that licence and put it...? Could they take only 10% of the paid newspaper or—

Mr. John Hinds: We have a really good example of this from Brunswick News, one of our members in Moncton. During the case of the Moncton shooting, there was that somewhat iconic photograph of the shooter walking down the street. Brunswick News had that behind a paywall, and it was for subscribers only.

The public broadcaster went behind the paywall, took the photo, and put it on their site—attributed, but put on their site—and made it free for use. Again, Brunswick News has a business to run, and their copyright was taken and put in the public domain.

Mr. Frank Baylis: I understand your concerns on that. How would you see the copyright rules being rewritten to address that?

Mr. John Hinds: I think there are two or three ways. If you look at it right now, we've seen examples in Germany and Spain where government has moved to limit copyrighting titles and things like that. The European Union is looking right now at a new copyright directive that has a publisher's right, a publisher's stand-alone right, such that publishers would have a separate right to control their content.

Another option we've looked at that I think would be an amendment, if you want, to the fair dealing principle would be a sort of "hot news" exemption. This is something that has been developing in U.S. case law. There is a Court of Appeal case in the U.S. called the Motorola case, and it is really about Motorola stealing NBA information and putting it up there. Really, what the courts have said is that under the hot news provision—they've used the 24-hour rule—for the first 24 hours fair dealing doesn't apply, so the generator of the copyright retains that ownership for the first 24 hours.

● (1600)

Mr. Frank Baylis: In another committee, we're heavily into the Facebook scandal and the concern for people's private data, let alone that you've written something to sell. For example, if I go to see my doctor and he emails me my information, it might get routed to the States. In that routing, they'll take all my private medical data. I have no control over it.

There are these arguments being made that all data should be owned by someone. Is that in line with something that you're looking for?

Mr. John Hinds: I think what we view strongly is that if you create something, you should have a right similar to a film or music. I think the music industry has been very effective at establishing their rights of ownership for their content, as have the software and film industries. I think what we're saying is that as an industry where information and data are becoming more important, we would like to own that right, and again, for commercial purposes. I think we have to be clear on that.

The Chair: Thank you very much.

We're going to move to Mr. Jeneroux.

You have five minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, Mr. Chair.

Thank you for being here.

I want to start with Wikimedia.

Your organization is responsible for running probably, arguably, one of the most popular websites in the world, making it a lucrative outlet for advertising. However, your organization continues to opt out of putting advertising on Wikipedia. Can you explain the rationale behind your philosophy?

Mr. Jean-Philippe Béland: I will answer in French, if that is okay.

[*Translation*]

The reason we don't post ads is because we want to remain independent. In our view, knowledge and expertise should not be influenced by external organizations. It is this reasoning that explains why we haven't become a commercial platform. We really want to remain independent and provide people with a product they can trust: knowledge and expertise developed independently by a neutral body.

[*English*]

Mr. Matt Jeneroux: Have there been conversations within your organization, perhaps going down a future path in which you'd look at advertising? Is it the philosophy of Wikimedia and Wikipedia to stay away from advertising?

[*Translation*]

Mr. Jean-Philippe Béland: As I mentioned at the beginning, Wikipedia sites are operated by the Wikimedia Foundation, which is based in the United States. Wikimedia Canada is an independent organization. So I couldn't answer for all the sites. However, according to what is published, we have no intention of commercializing or advertising. This is one of the priorities of the board of the Wikimedia Foundation.

[*English*]

Mr. Matt Jeneroux: Thank you.

Mr. Swail, I appreciated your presentation. Connect me and the committee a little bit with your relationship with Access Copyright and the type of royalties that you receive from a group like Access Copyright and how they would be reinvested.

Mr. David Swail: I can certainly do that.

Our affiliation with Access Copyright is really through the individual firms that are members of the Publishers' Council. Pearson Canada, for example, would be an affiliate of Access Copyright. It would therefore be in receipt of royalties from Access Copyright that reflect the model of usage for those resources that are used in the education sector under collective licensing, which as we know, has now been greatly reduced in Canada.

The figure of $30 million that I mentioned in my remarks, I think, has been in front of this committee before. It's a fairly good estimate of the income that flowed through Access Copyright to both publishers and creators in the sector over the course of many years when collective licensing was more prevalent than it is today. Half of that $30 million would essentially flow back to creators, individual writers, and other contributors. The other half would effectively reside with publishers for decisions around reinvestment in Canadian content.

That was the gist of my remarks around investment, that contribution back to publishers and creators—in my members' case, to publishers—is critical to support the return on investment that they can expect to find in a Canadian marketplace. That's what we would like to see restored through legislative change.

● (1605)

Mr. Matt Jeneroux: Do you mean through Canadian content?

Mr. David Swail: That's right.

Mr. Matt Jeneroux: On that, can you speak about the role that multinationals play in the Canadian educational publishing sector?

Mr. David Swail: Sure. Among our members are firms like Pearson, McGraw-Hill, Nelson, Scholastic, and on the education side, Wiley and Elsevier. Depending on how you would measure it, it's reasonable to say that we're probably doing in the vicinity of 80% of the paid commercial business that is done with schools, universities, and colleges across Canada. One big player that's a member of ours is Nelson, which is a Canadian-owned firm, or at least a Canadian-based firm; it's actually owned by some hedge fund money out of New York, I think. These are all global players.

The other element that I was pointing to in my remarks was that these firms all have alternatives to investment in a market like Canada. They could be the U.K., Australia, China, India, Latin America, etc. Most of these players have footprints right throughout the globe, and attracting investment to build Canadian resources for Canadian students and educators is really based on fundamental return on investment criteria that they see being met in the marketplace. The undermining of collective licensing casts real doubt on the viability of this market for those global players who can invest that money in lots of other places.

The Chair: Thank you.

Mr. Masse, you have five minutes. After that, we're going to suspend to vote and then come back.

Mr. Brian Masse: Thank you, Mr. Chair.

When we get this done, we'll report back to the minister, and then the minister will review our work and report back to us. If he wants to change the legislation, it will likely have to go back out again. It would be highly unusual for him not to have a comment.

Do you have any way, regulatory or otherwise, to prioritize things as needing to be done immediately? Do you have any thoughts on the Copyright Board?

I'll start with Mr. Hinds and then go across. What would you consider to be low-hanging fruit, things that can be accomplished without having to go through legislation?

Mr. John Hinds: It would be hard to do without legislation, because you'd have to deal with the fair dealing clause for news. I can't say whether legislation would be required.

With respect to the Copyright Board, it's not really a Copyright Board issue, in the sense that we would be dealing with the real legislative framework.

[*Translation*]

Mr. Jean-Philippe Béland: In our view, legislative changes are not an option if the Government of Canada's publication licensing system is to be changed. That is the main argument I support.

If we want to avoid having to amend the act, we suggest not changing the term of copyright. Currently, copyright expires 50 years after the author's death. We have heard that this duration could be modified, but we suggest not touching it. This would avoid having to amend the act.

Otherwise, the safe harbour rules would have to be improved. For example, in addition to Wikipedia, we also have Wikimedia Commons, where we host user-generated content. If they violate copyright or other laws, we would not want Wikimedia to be responsible. Its users remain free to act freely.

[*English*]

Mr. David Swail: On that question, I would point to the opportunity through the reform of the Copyright Board, which is under way almost as we speak and certainly will be this year, to examine statutory damages in some of the language. This has been pointed out both in the submission that our organization made and in the many other submissions by other organizations.

The effective goal, as we're saying, would be to harmonize the statutory damages criteria in the act, such that there are meaningful penalties for violation of copyright law. This exists for some sectors in more meaningful ways than in other sectors, and that imbalance is something that can and should be addressed, and can be addressed outside of legislation according to our understanding of the Copyright Board reform process that's right in front of us. Probably the most important thing we would encourage is to set the bar to have consistency for penalties involved in copyright violations.

● (1610)

Mr. Brian Masse: Thank you. That's good.

The Chair: All right. We're going to suspend, and we'll be back right after the vote. I believe we have about 20 minutes to get back to the House to vote.

Thanks, everybody. We'll be back.

● (1610)

(Pause)

● (1655)

The Chair: We're back.

Thank you to our panellists for sticking around while we did our duty and went to vote. We're going to get right back to our questions.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much. My first question will be for John Hinds.

On May 8, the Fédération nationale des communications, which advocates for news and media professionals, made a number of recommendations to support the remuneration of Canadian journalists. They suggested something to us about a new category for protected work that would be called "journalistic works", as well as the establishment of a collective rights society charged with defending the copyright for journalists and working to ensure fair compensation.

To begin with, can you give the committee a sense of how the remuneration of Canadian journalists has evolved over the last 10 years?

Mr. John Hinds: Most Canadian journalists are covered by the collective bargaining process, and I think there have been fairly stable wages. The challenge we've had is that we've lost a lot of journalists. We continue to lose newspapers across this country almost daily. We've lost 23 of the newspapers in Saskatchewan over the last two to three years, and, as you know, in places such as Guelph and Nanaimo, and of course in Ontario there were some recent closures. The remuneration is not the issue in the sense of current journalists. It's really the lack of jobs, if you want....

The other challenge we see is with the renewal of the profession. When you're in a profession, people are in the jobs, and there are no new jobs created. It's really hard to bring young people into the profession. Again, it's becoming harder to attract people into the profession because of the precarious environment. I think that would be where I would go on that.

● (1700)

Mr. Terry Sheehan: It's interesting. In terms of your comment about the print media, I think lately we've seen that somewhat in northern Ontario through Sault Ste. Marie. We've seen the decline of the other media as well. Television is now centralized in Sudbury, where they have some reporters. CBC used to have a stringer and now they don't. But there has been a rise of some of the Internet companies, like SooToday, that also have a presence in Guelph and in Thunder Bay, etc. I'm sure you're familiar with them.

One of the differences as well, it seems to me, is that some of these Internet companies that are starting up aren't necessarily unionized and don't have a collective agreement—

Mr. John Hinds: No.

Mr. Terry Sheehan:—and they have different revenue streams that they're trying to work on.

I've watched the evolution of SooToday and the *Sault Star*. The *Sault Star* is trying to pick up some of the Internet presence. To get to my question, one of the things the *Sault Star* will do, say, is put out an article and then share it with Facebook and Twitter.

Has there been any thought about any kind of compensation? Facebook loves it, and the *Sault Star* must want to do it as well, because when I share with my *x* number of followers, there it is. Are there any thoughts or discussions about how any kind of compensation could happen by using social media and, if you will, the traditional forms of media?

Mr. John Hinds: Yes. I think everybody recognizes the value of social media. I think we all see those articles on social media, and newspapers put a lot of their content on social media. I think that's a voluntary thing. What we're more concerned about is the compensation model when it's not done voluntarily. Using social media vehicles to drive audiences is one thing, I think, and that's essentially voluntary.

Google is another example. I mean, there are a lot of them. If you talk to Village Media, which owns SooToday, you can see that they have a very effective relationship with Google.

Mr. Terry Sheehan: Yes, they do.

Mr. John Hinds: Interestingly enough, in a lot of cases, they don't use Google ads. They sell their own advertising in the Soo and in those communities, because you just can't make enough money on the Google ads. They're selling their own ads but they're using a lot of the tools, many of which are free. It's the classic frenemy discussion that our members have with it, but obviously social media is absolutely key to the future.

The challenge we find is about retaining the brand, though, because I think one of the things you see is that even if you talk to people and they say they get all their news from X social media site, they're actually not getting their news there. They're getting the news from a journalistic brand. I think that's a really important connection to maintain in a world where really all you have is your intellectual property and your brand. I think part of the scraping and part of the non-licensed content distribution destroys that brand connection with the reader. If you get it on social media, and it's put there by the brand, the brand is there. It's a *Globe and Mail* story, say, on Facebook and that's clear, but it's not the generic story, one where you don't know where it came from.

The Chair: Thank you very much.

[*Translation*]

Mr. Bernier, you have the floor for five minutes.

Hon. Maxime Bernier (Beauce, CPC): Thank you, Mr. Chair.

Good afternoon.

My question is for Mr. Béland.

You talked about your organization's mission, but I have a slightly more specific question for you.

Can you tell us to what extent you use the open access content produced by Wikimedia compared to more traditional publications, such as written works? Could you explain the difference between the two?

Mr. Jean-Philippe Béland: Do you mean how we, as Wikimedia Canada, use it?

Hon. Maxime Bernier: Yes.

Mr. Jean-Philippe Béland: Actually, we use the written content as a reference for Wikipedia, for example, but we don't use the content itself. We never copy that content; we don't even use fair dealing. Everything produced on Wikipedia is under free licence.

I don't know if that answers your question.

Hon. Maxime Bernier: Yes. So it's open access content.

Mr. Jean-Philippe Béland: Not only is it open access, but we give everyone the right to use and modify it as they see fit.

● (1705)

Hon. Maxime Bernier: Could you tell us a little more about your relationship with YouTube?

Mr. Jean-Philippe Béland: We have no official relationship with YouTube. Having said that, as I mentioned in passing, Google and YouTube have big problems with fake news, as everyone knows. These companies announced that they would use Wikipedia extensively as a reference to counter fake news. This shows that Wikipedia is a reliable source.

Hon. Maxime Bernier: So you don't have a direct link to YouTube, but do you act through Google?

Mr. Jean-Philippe Béland: We don't have a link with Google either.

Hon. Maxime Bernier: So your open access content is broadcast on YouTube at the same time as on other platforms.

Mr. Jean-Philippe Béland: Exactly.

For instance, Google and YouTube may decide to use our content. Since we give everyone the right to use it, even for commercial purposes, these companies have the right to use it and they do.

Hon. Maxime Bernier: In your recommendation, you want the Government of Canada to make publicly available research and studies conducted by government agencies, researchers or public servants. Currently, these documents are subject to copyright.

You said that in the United States, documents like this were accessible. Does that mean all U.S. government documents?

Mr. Jean-Philippe Béland: It includes everything published by the U.S. federal government. State governments have their own regulations, just as here in Canada, the provinces have their own regulations. However, everything produced at the federal level is in the public domain as soon as it is published, including scientific research.

Hon. Maxime Bernier: Your suggestion would be that we draft a section in the act to require the government to do so. You think that should be done through legislative change, don't you?

Mr. Jean-Philippe Béland: From what I understand, crown copyright is defined by section 12 of the Copyright Act. I think that if this section were amended, the government could be forced to put these documents in the public domain.

Hon. Maxime Bernier: One of my colleagues asked you a question about other countries, particularly in Europe, where governments would give free access to their information. Do you have any data on that?

Mr. Jean-Philippe Béland: No. As I said earlier, I don't have that information on hand. But we could send it to you.

Hon. Maxime Bernier: Excellent.

In fact, what we would like to know is what kind of data the different governments make freely available. We would also like to know if there are any conditions that must be met for this data to become accessible.

You also said that governments, especially the U.S. government, said that taxpayers had already paid, through their taxes, for the production of these documents, which is why these documents and research must be accessible to the public.

Are there other organizations in Canada that support this position?

Mr. Jean-Philippe Béland: Yes, absolutely. For example, a brief was submitted before this committee by Creative Commons, which supports the same position.

Hon. Maxime Bernier: Perfect.

Thank you.

[*English*]

The Chair: Thank you.

We're going to move to Mr. Longfield.

You have five minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Mr. Chair.

Thanks again to all of you for your patience today, as well as for being here.

Mr. Swail, I want to continue down the road about the educational use of copying. Since 2012, a lot of schools have stopped paying educational copying tariffs to the copyright collectives. Schools contend that while their practices have changed, they remain respectful of copyright, but authors and publishers are saying that their revenues are dropping. Some of that might be because of the change of use of materials. We see your graphs showing the declining purchase of textbooks, which are different from the curves we saw last week.

In terms of the act that we're reviewing, what are your views on educational copying? You made a comment earlier about the undermining of collective licences. I keep thinking collective licences might be part of the solution that we might want to be looking at within the act.

Mr. David Swail: Collective licences are certainly one potential solution. We wouldn't say they're the only solution, but they have proven over time to be a very efficient one. Educational institutions certainly have options to license directly from publishers and other content providers. We expected that we would see an uptick in some of that direct-to-publisher licensing, but that really hasn't happened.

Our view would be that collective licensing as we have known it —prior to 2012—is actually a pretty efficient way for institutions to license the reproduction rights and sell their uses for occasional uses, for somewhat ad hoc uses. The main concern we see now is copying on a scale that we don't feel is really consistent with what one would think of as fair. At the crux of that, as I mentioned, is the whole issue of proper commercial compensation for copyrighted materials.

● (1710)

Mr. Lloyd Longfield: Yes.

Mr. David Swail: That's why we would like to see language in the act that reintroduces the importance of the marketplace and the commercial viability of that reproduction as paramount.

Mr. Lloyd Longfield: Thank you.

Is there a difference between K to 12 and post-secondary? Would the act benefit from separating those or would we be looking at something that would cover all education?

Mr. David Swail: Their practices are different, but I think the principles are consistent enough and important enough that there wouldn't really be.... On the spot, I can't think of a meaningful division between the two for the purposes of the legislation.

Mr. Lloyd Longfield: Thank you for both of those answers.

The other area I'm interested in and that I don't have a lot of knowledge about is indigenous concerns. I've participated in indigenous reads. I'm aware of indigenous authors. I'm working with our local bookstore in terms of knowing which authors are indigenous. How can we help indigenous peoples better protect their traditional knowledge and the published knowledge that they're putting out?

Mr. David Swail: One of the things I pointed to in my remarks was around digital solutions. We know that in terms of the presence of Internet access, etc., on certain first nations communities and territories, it is not always consistent. Certainly, to the degree that first nations learners often tend to be distance learners, we think digital solutions can be extremely helpful.

What we're pointing to is an opportunity to continue to drive money towards the creation of those resources so that they can be accessed in a more efficient and simple way, can be done over great distances, and won't require the more traditional physical presence in classrooms. That's a part of our transformation and transition. It's a sector that's important, I think, to maintain.

Mr. Lloyd Longfield: Thank you.

I have a minute left, Mr. Hinds. You talked about the use of locks. Maybe this ties in with the digital discussion of how we protect digital media and make sure that authors and creators are paid for what they put up digitally.

The example you gave was to go and get a picture on the other side of a lock and bring it back across, which sounded to me more like an enforcement than an actual.... The law might be there, but people are finding ways of getting around the law. Could you speak to how digital copyright could be embedded in the act?

Mr. John Hinds: When we went through this discussion previously, we always thought there was so much of an emphasis on tampering with locks and that kind of thing which we thought that once it was locked up, it was going to be locked up. Usage has now come to the point where that is no longer the case, and if you have legitimate access to it.... We have yet to see a court even enforce the terms and conditions of the licence of even accessing it. There are some cases going through the courts on that, but I don't think we're super hopeful.

Mr. Lloyd Longfield: Does the act cover it?

Mr. John Hinds: It would be interesting to see, right? We haven't had a definitive ruling on that, but we wait with hope. If it were locked down, and it were locked down and the terms and conditions of the contract that you agreed to as a subscriber were enforced, I think that would go a long way.

The Chair: We're going to move to Mr. Jeneroux, for five minutes, please.

Mr. Matt Jeneroux: Mr. Hinds, on that point, how do other countries get around the digital locks with regard to the WIPO treaties?

Mr. John Hinds: I think it's a challenge for everybody right now. Most of them don't have as strong a fair dealing.... Certainly, the European countries don't have as strong a fair dealing regime as we do; I mean, it's a quote. It's more of a quote, so you don't have the same flexibility if you want to do it. The U.S. has the same challenges that we do.

Mr. Matt Jeneroux: Mr. Swail, do you have any comments on TPMs or digital locks?

Mr. David Swail: For our member publishers, the integrity of that protection is critical to allowing us to move to more of an online way of serving our customers so that we can safeguard the intellectual property we're mounting and putting forward for the education sector in particular. E-books would be a good example. Unlike ad hoc and limited amounts of physical copying, for us the importance of TPMs is that it allows us to have a sustainable model for password protected Internet access to platforms that really are at the heart of what we can do from a technology perspective to help learners in the classroom.

They're critical for us going forward, absolutely.

● (1715)

Mr. Matt Jeneroux: Right. Okay.

We've been presented with a number of models that are out there in some other countries. There's the U.K. version and the U.S. fair usage model.

In my few remaining minutes, maybe I could hear from all of you on the things that you think are beneficial, that we maybe should consider, or that aren't working well there.

We'll start with you, Mr. Hinds.

Mr. John Hinds: We're seeing I think some hopeful developments in the EU. We've seen both Germany and Spain, and to a lesser extent Italy, come forward with various protections. Now it's moving to an EU level. There's the new EU directive where they're discussing the publisher's right. It's interesting, because we've seen there that as soon as that discussion enters the public realm, as a result there's a much more collaborative approach by some of the aggregators. They do come forward, either with funding for journalism or.... I mean, we've seen particularly journalism funds in almost all the big EU countries as a result of government actions on the copyright file. To us, it really shows that once you strengthen the balance, or even threaten to strengthen the balance, it works wonders.

The U.S. is a bit more complicated. There's probably a stronger legal precedence in the U.S., whether it's through the hot news stuff and things like that, but again, the enforcement is tough, right? We're 700 across the country, and many are small members. While *The Globe and Mail* and Postmedia may be able to do it, and they can enforce it, a lot of those small players just don't have the capacity to do it. That's where I think the legislative model needs to be amended: to give them that power.

Mr. Matt Jeneroux: Perhaps we can quickly jump to Mr. Swail.

Mr. David Swail: The two jurisdictions we looked at were really the U.K. and Australia. What's important there, in our view, is the importance of the effect on the market, which is, of course, one of the six factors in the determination of "fair" in our act. Those are given much more prominence and much more heft, if you will, in the determination of options to fair dealing. That's the language we've brought forward over the past several years in draft form to various folks in government here. It's really what we would see as the most helpful in terms of maintaining the integrity of the marketplace for the kinds of reproduction we're talking about within the sector of education.

Mr. Matt Jeneroux: Mr. Béland, do you have a comment?

[*Translation*]

Mr. Jean-Philippe Béland: To answer your question on fair dealing, we haven't done any research on what other countries are doing, because it doesn't apply to us, because we don't use fair dealing.

I don't know if that answers your question.

[*English*]

The Chair: Thank you very much.

Mr. Baylis, you have five minutes.

Mr. Frank Baylis: Thank you, Mr. Chair.

Mr. Swail, I assume this chart is from you.

Mr. David Swail: It is, yes.

Mr. Frank Baylis: I have a couple of questions. First, are these in constant dollars?

Mr. David Swail: I don't believe they are in constant dollars. You'd think I would know that, but I got some help on this from some other folks.

Mr. Frank Baylis: We received a different chart, and let's just say it was going up, not down.

Mr. David Swail: It turns it the other way around, yes, and that's exactly the reason I introduced this.

Mr. Frank Baylis: Is that why you introduced this?

Mr. David Swail: Yes.

Mr. Frank Baylis: I notice you have a carve-out that says you did not include exports and foreign sales. If you had, would the other chart we'd seen be correct?

Mr. David Swail: It would be closer to correct. That's right.

The background for this document was really my effort to try to understand how trends as introduced to this committee in the previous document could be so dramatically different from the trends that I know exist for our members. Those are not public numbers, but the trends—

● (1720)

Mr. Frank Baylis: We're going to try to reconcile all these different numbers we're getting.

Mr. David Swail: Yes, and I'm certainly happy to provide those to the committee.

Mr. Frank Baylis: Could you do two things? Could you provide this chart—we already have this one—but one that includes your exports and other foreign income to see even whether that at least aligns or not?

Mr. David Swail: Okay.

Mr. Frank Baylis: Then I'd also like to see it in constant dollars just so we can see if there's an actual real trend: are you keeping up, really going down, or going down much more than we think?

Mr. David Swail: I have just a couple of observations on that.

Here we've tried to focus first of all on educational institutions as end user customers. Second, the trade publishing business, which includes things like *Harry Potter* and *Fifty Shades of Grey*, is a very different kind of business, equally mature in this country, but it tends to fluctuate depending on whether in a year you might have a dramatic bestseller that can actually spike the numbers.

We looked at the education sector. It was much more mature, and, personally, our members see a trend that's radically different from what you saw previously, which is—

Mr. Frank Baylis: We'd like to see that trend.

There's another thing you might be able to give us. There is a consumer price index specifically for education and recreation. There's an education one. I'd like to know whether these expenses, compared to the overall expenses of our education system, are going up or down. How are they in relation to not just your income, but in terms of all of the expenditures? Do you follow me?

Mr. David Swail: Yes, okay. So you're looking for, say, per capita spend—

Mr. Frank Baylis: We have the numbers. There's a consumer price index and let's say that our spend is going up by 10% and nothing has changed for you. Then you should go up by at least 10%, if you follow me.

Mr. David Swail: Right, yes.

Mr. Frank Baylis: Now, you had mentioned a couple of things. There's a lack of consistency on penalties. Could you elaborate on what you'd like to see in penalties? Also, while you're talking about penalties, for people taking from the publisher and using without their consent, if I understand correctly, could you elaborate on that? Also, is there anything you want to add about differences between the creator and the publisher? Are you speaking as one voice, or are there differences between you as a publisher representing publishers and the authors?

Mr. David Swail: I'll start with the last part of that question.

I think for all intents and purposes, we speak as one with our creators, and certainly you've seen the numbers and you've seen the impact of a reduction in royalties on creators' incomes. It has been pretty much in lockstep for publishers as well.

One of our challenges is trying to continue to see enough incentive in the marketplace for writers to actually agree to sign on with us and produce new product for the education sector. We have the same goal of trying to return some compensation for that particular effort.

With regard to statutory damages and the harmonization under the Copyright Board review that's under way currently, what we're looking for there is consistency across all creative sectors, because right now there are higher formulas for penalties in, say, the music industry and other areas, compared to in publishing. The background on that I can't really comment on, but we do know and have proposed to government that a more meaningful and more consistent set of damages in the language in the act would actually be very helpful, to present essentially a more consistent deterrent to violation.

Mr. Frank Baylis: Mr. Hinds, you said on a few occasions that you were looking for something more along the lines of the protections the music industry has. I get that. The music industry will be up the next set around. They're not happy at all with how the Internet has been eating tremendously into their income.

Are you concerned or do you have ideas that are better than that? Let's say we were to implement the music industry model and you got the equivalent of Spotify, and you'd be getting pennies: after you write your article, you get $3.10. Do you have ideas of how you'd like to see that?

Mr. John Hinds: As I said before, I think there are some models on that. I think the publisher's right of the EU would be the most effective, in the sense that it would give you complete control to negotiate with the other groups if you want. A hot news exemption would be the same thing. It would protect your content from fair dealing right off the bat for a period of time. I think those would be the ways we would be looking at it.

To a certain extent, it's the negotiating power, really, between the publisher and the aggregator that we really have to deal with. Right now the thing is stacked essentially against the publisher in favour of the aggregator, so I think we need to restore the balance there between the two.

● (1725)

The Chair: Excellent. Thank you very much.

Mr. Masse, you have the final two minutes of the day.

Mr. Brian Masse: Thank you, Mr. Chair.

Mr. Hinds, I'll start with you. Mr. Swail and Mr. Béland, you might also have a comment.

I haven't asked this question before. We've had a lot of artists and authors and so forth in front of us. It's about reaching that balance in what is exposure that benefits you. How do we grapple with that? That's one of the things with people, whether they are putting their work on YouTube, for example, or whatever. Do you have any comments about that?

I'm interested in some perspectives as to the balancing act of getting free exposure to some degree and not overexposure. What seeds work that could be purchased versus what is just outright abuse? Do you have any thoughts about that?

Mr. John Hinds: That's interesting. I think the reality of the marketplace is that there is that balance. People are out there marketing their brand. Whether they're a newspaper...they put stuff out on social media to draw people in. That's how they get subscribers and everything else. There's always that balance.

I think the idea, though, has to be that, at the end of the day, if you're putting it out there, you do control it and you understand the terms and conditions under which you're putting it out there and you have control over them. I think that with so much of what happens now, there is no control. Essentially, in the existing framework, it's put out there, and you lose control and you have no ability to monetize it. I think it's really about bringing back that control to do it.

Obviously, any author or any publisher wants the widest distribution possible, but again, with some balance and an opportunity to monetize it.

Mr. David Swail: I would probably think of an example in K-to-12 publishing, where authors are almost entirely not name brand or recognized authors. They're working as part of a team. They may be working on only a very specific part of a resource because they have deep subject-matter expertise in a certain area, be it mathematics, science, or any other field for that matter. Their model, if you will, is not such that they have an opportunity to further capitalize on their presence in that marketplace through subsequent subchapters in the next grade 9 math textbook. They have one shot at it and they would like reasonable compensation for the time they put in. A lot of that compensation is based on royalties, which are based on sales. When sales go down and royalties go down, they haven't really gained much.

Even if they have a very successful launch that they are part of, there won't be another way to monetize that down the road in the next textbook. It really depends on the work that goes in up front.

Mr. Brian Masse: At the end of the day, I suppose it's like any other business. It's up to the creator to decide when they want to use their work as subsidization for other goals or as a loss leader, as they do in the retail sector by putting their merchandise at the end of the aisle. The control or the decision is always vested in the person who makes that decision for whatever purpose they want versus others making that decision for them.

Mr. John Hinds: Well said.

Mr. Brian Masse: Thank you very much for your time.

The Chair: On that note, I want to thank our panellists for bearing with us, again through the break for votes. Thank you very much for being here today and answering our questions.

Before we adjourn for the day, I believe, Mr. Jeneroux, that you have a notice of motion you'd like to put through.

Mr. Matt Jeneroux: Thank you, Mr. Chair, for ceding the final two minutes to me.

The Chair: You have one minute.

Mr. Matt Jeneroux: The committee will recall that I put a notice of motion last week towards the Trans Mountain pipeline. We're putting another motion on the table. I'll read that motion to the committee:

> That the Standing Committee on Industry, Science and Technology undertake a study of four meetings to review, among other things: the overall cost of buying and expanding the Trans Mountain Pipeline project, the costs related to oversight (crown corporation) of the project, and how this decision will impact investor confidence in Canadian resource projects; and that the Committee reports the findings back to the House and make recommendations on how to restore investor confidence.

The Chair: Thank you for your notice of motion. It has been received.

Hon. Maxime Bernier: I think we'll have the NDP on board.

The Chair: On that note, I thank you all. Have a wonderful day.

The meeting is adjourned.

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